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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 563

SIKORA REALTY CORPORATION

v.

TIGHE E. WOODS, HOUSING EXPEDITER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The United States Emergency Court of Appeals rendered no opinion (R. 12).

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on January 2, 1948 (R. 12). The petition for a writ of certiorari was filed on January 30, 1948. The jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, making applicable Section 240 of the Judicial Code, as amended.

QUESTION PRESENTED

Whether the Emergency Court of Appeals continues to have jurisdiction since the termination of the Emergency Price Control Act on June 30, 1947, to determine the validity of a rent order issued under that Act, where such order is not involved in any "suit, action, or prosecution" based on "rights or liabilities incurred, prior to such termination date," within the meaning of Section 1 (b) of the said Act, *infra,* p. 8.

STATUTES INVOLVED

The pertinent parts of the statutes involved are set forth in the Appendix, *infra,* pp. 8–11.

STATEMENT

On November 28, 1947, the petitioner herein filed with the Emergency Court of Appeals a complaint requesting that that court declare invalid an order issued by the Rent Director for the New York City Defense-Rental Area on July 31, 1946, which established the maximum rent for petitioner's housing accommodations (R. 1–7). Respondent moved the court to dismiss the complaint on the grounds that as to the period prior to June 30, 1947, the court's jurisdiction had expired with the termination of the Emergency Price Control Act and had not been preserved by Section 1 (b) thereof, *infra,* p. 8, since it did not appear that there was pending or imminent any suit or prosecution or proceeding within the contemplation of that section; and that with

respect to the period commencing on July 1, 1947, the Emergency Court of Appeals had been granted no jurisdiction by the Housing and Rent Act of 1947 to pass on the validity of regulations and orders issued under it (R. 7–9). Respondent's motion was granted by the Emergency Court and the complaint was dismissed (R. 12).

ARGUMENT

1. Petitioner urges that the Emergency Court of Appeals has jurisdiction to determine the validity of a maximum rent order issued prior to July 1, 1947, although it has failed to show that it incurred any rights or liabilities under the order while it was currently in force and effect which may still be litigated. It is plain that the Emergency Court of Appeals was created for the sole purpose of carrying out the purposes of the Emergency Price Control Act, and that in the absence of other legislation continuing its jurisdiction the termination of that Act left that court with only those residual powers saved to it by Section 1 (b) of the Act itself, *infra*, p. 8. Under Section 1 (b) the powers of that court continue only "for the purpose of sustaining any proper suit, action, or prosecution" with respect to "rights or liabilities incurred," or "offenses committed" prior to June 30, 1947. The Emergency Court of Appeals has stated that these are the basic requirements for the continuation of its jurisdiction in both price and rent cases. See *Standard Kosher Poultry, Inc.* v. *Clark*, 163 F. 2d

430; *Talbot* v. *Woods,* 164 F. 2d 493; *Cf. 150 East 47th Street Corp.* v. *Porter,* 156 F. 2d 541. Petitioner has not, in the instant case, alleged any facts which would, if proved, establish that the continuing jurisdiction of the Emergency Court was necessary "for the purpose of sustaining any proper suit, action, or prosecution" pending or imminent at the time the complaint was filed in that court. The case at bar is thus distinguishable from *Woods* v. *Hills,* No. 437, this Term, recently argued and now pending decision. In the latter case a liability incurred during the life of the Emergency Price Control Act was being asserted against the landlord in a suit brought to recover treble damages, which was pending on appeal on the date the Act expired. In the instant case the proceeding in the Emergency Court was based on the Administrator's denial of a protest on the ground that the Act had expired, not on a right or liability being asserted in a suit for damages and therefore still current. Since the rent order involved here was not currently in force under the Emergency Price Control Act when the complaint was filed in the Emergency Court, and since the complaint fails to show that a right or liability incurred under that Act or a regulation or order duly promulgated thereunder was involved within the contemplation of Section 1 (b), the Emergency Court has no jurisdiction to pass upon the validity of the rent order, either under Section 204 (a) or Section 204 (e).

Respondent's authority to administer rent control for the period subsequent to June 30, 1947, is derived solely from the Housing and Rent Act of 1947, Section 203 (a) of that Act, *infra*, p. 9, specifically forbidding the establishment or maintenance of any maximum rent after that date under the authority of the Emergency Price Control Act of 1942, as amended. The Housing and Rent Act of 1947 does not mention the Emergency Court of Appeals and does not vest in that court any jurisdiction whatsoever. The legislative history of that Act, however, makes it clear that the failure to mention the Emergency Court was not an oversight, but was the result of a deliberate intention on the part of the Congress to withhold from that court all jurisdiction under the new rent legislation. In the report to accompany the bill (H. R. 3203) which later became the Housing and Rent Act of 1947, the Committee on Banking and Currency of the House of Representatives stated unequivocally that the committee did not deem it necessary to continue an extraordinary court such as existed under the Emergency Price Control Act, meaning, of course, the Emergency Court of Appeals. H. Rept. No. 317, 80th Cong., 1st Sess.[1] In the face of the committee's plain

[1] At p. 13 of that report, the committee said: "In view of the fact that it is nearly 2 years since VJ-day, and that sugar, rice, and rents are now the only elements of our economy regulated as to the maximum prices, the committee does not deem it necessary to continue an extraordinary court or elaborate wartime system of procedure and review, such as exists

statement showing a contrary intention, it would be unreasonable to imply that the exclusive jurisdiction granted to the Emergency Court by Section 204 (d) of the Emergency Price Control Act, *infra,* pp. 8–9, was extended to the Housing and Rent Act of 1947. See *Talbot* v. *Woods, supra,* fn. p. 495.

2. Petitioner contends that the Housing and Rent Act of 1947 is unconstitutional unless the Emergency Court of Appeals has jurisdiction to determine the validity of the rent order issued by the Rent Director in 1946 under the authority of the Emergency Price Control Act of 1942. This contention is apparently made on the supposition that no means are available under the 1947 Act for having the validity of maximum rents established under that Act judicially determined. Apart from the fact that the court below had no opportunity to pass upon this question, which should preclude petitioner from advancing it now for the first time in this Court, it

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under the Emergency Price Control Act of 1942, as amended. The need for such extraordinary measure is inconsistent with the requirements of this stage of the transition period. Therefore, all litigation under this title will be adjudicated in the courts which historically have had such jurisdiction. Contrary to the view held by a few of the witnesses that such action will result in enforcement chaos, the committee, which recognized the wisdom and need for such extraordinary measures in 1942 when we were in a critical period of war, is of the belief that the courts of this Nation can and will adequately handle the litigation involved in the regulation of rents."

See also the Minority Views, at page 40 of the report.

is clear that the courts which are given general jurisdiction by Sections 205 and 206 of the 1947 Act, *infra*, pp. 9–11, are competent to pass upon the validity of maximum rents established under that Act, in proper cases brought before them.[2] See fn. 1, *supra*, p. 5. Thus, petitioner's allusion to a lack of due process of law (Pet. 14) is without substance.

CONCLUSION

The decision of the court below is correct, and does not warrant further review. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

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MARCH 1948.

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[2] If any attempt is made to impose liability upon petitioner for violations occurring before the expiration of the Emergency Price Control Act, petitioner's remedy would be in the Emergency Court. See p. 4, *supra*.

APPENDIX

1. The pertinent provisions of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 765, 58 Stat. 632, 59 Stat. 306, 60 Stat. 664; 50 U. S. C. App., Secs. 901 et seq.), are as follows:

> SECTION 1. (b) The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1947, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incured, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.
>
> SECTION 204. (d) * * * The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this sec-

tion, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

2. The pertinent provisions of the Housing and Rent Act of 1947, approved June 30, 1947 (Pub. Law 129, 80th Cong., 1st Sess.), are as follows:

SECTION 203. (a) After the effective date of this title, no maximum rents shall be established or maintained under the authority of the Emergency Price Control Act of 1942, as amended, with respect to any housing accommodations.

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment, for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided,* That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither will-

ful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same plaintiff prior to the institution of the action in which such judgment was rendered.

SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order en-

forcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

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